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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,811	03/25/2004	Yoshinori Tanaka	FUSA 21.076	7590
26304	7590	07/31/2007		
KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			EXAMINER ROSE, KERRI M	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 07/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/808,811	<b>Applicant(s)</b> TANAKA ET AL.	
	<b>Examiner</b> Kerri M. Rose	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/14/06; 3/25/04</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

2. The abstract of the disclosure is objected to because it may exceed the 150-word limit. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

3. Claims 20, 26, and 29 are objected to because of the following informalities:
  - a. In claim 20 “receiving for” in line 5 and “for” in line 10 should be deleted.
  - b. In claim 26 “bee” in line 3 should be changed to “been.”
  - c. In claim 29 “bee” in line 3 should be changed to “been,”

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 23 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claims 23 and 24 refer to steps. However, they depend from claim 17, which is not a method and does not disclose steps. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 15, 20, 31, 33, and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by McFarland et al. (US 7,212,532).

9. In regards to claims 15, 20, and 35, McFarland discloses an apparatus with receiving means (col. 2 lines 61 and 62); buffer means (col. 2 line 60); combining means and extracting means (col. 3 lines 47-51 determine the portion(s) that has not been received correctly. Col. 4 lines 14-17 retransmit the portion. Col. 4 lines 27-31 indicate that the previously received correct packets are combined with the newly received retransmitted packets to form a complete file.).

10. In regards to claims 31 and 33, McFarland discloses receiving divided packets in fig. 2. Figure 2 discloses the method for determining the portions of data that have not been received, packetizing the portions and retransmitting them.

11. Claims 25-34 and 37-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Rathonyi et al. (US 6,359,877).

12. In regards to claims 25 and 28, Rathonyi discloses changing a transmission parameter, such as data rate or packet sequence numbering, in accordance with conditions of a propagation

path (col. 8 lines 48-57); and dividing a packet into plural portions and retransmitting the portions (col. 9 line 62- col. 10 line 3).

13. In regards to claims 26 and 29, Rathonyi discloses attaching the same identifying information to the retransmitted packet (col. 10 lines 45-46 and 57-67).

14. In regards to claims 27 and 30, Rathonyi discloses retransmitting other portions as packet data after said retransmission (col. 9 line 66 – col. 10 line 3).

15. In regards to claims 31-34, Rathonyi discloses receiving divided packets and processing them based upon the retransmission number (col. 9 line 66 – col. 10 line 17 and fig. 3D).

16. In regards to claims 37-39, Rathonyi discloses comparing a first and second parameter, cutting a portion of data if conditions are inferior (col. 9 line 62 – col. 10 line 3) or extracting a plurality of data if conditions are superior (col. 10 lines 18-30).

17. In regards to claim 40, Rathonyi discloses a buffer (col. 8 lines 28-29); deciding a modulation parameter based upon conditions of the propagation path (col. 7 lines 37-44 [packet size, rate, or sequence numbering may be changed]); and deleting a packet that has been successfully transmitted (inherent because buffer space is not infinite) or retransmitting a packet for which reception has failed (col. 9 line 62 – col. 10 line 3 and col. 10 lines 18-30).

18. In regards to claim 41, Rathonyi discloses retransmitting a plurality of packets as a single transmission (col. 10 lines 18-30 and 57-67).

19. In regards to claim 42, Rathonyi discloses retransmitting part of a packet (col. 9 line 62 – col. 10 line 3).

*Claim Rejections - 35 USC § 103*

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 16-19, 21-24, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over McFarland et al. (US 7,212,532) in view of Rathonyi et al. (US 6,359,877).

22. In regards to claims 16, 21, and 36, McFarland discloses claims 15, 20, and 35, but not decoding the combined data, determining if there is an error; and storing the combined data in a buffer if there is an error.

Rathonyi discloses decoding combined data; determining if there is an error; and storing erroneous data in a buffer in figures 2C and 2D.

It would have been obvious to one of ordinary skill in the art to decode the data, as taught by Rathonyi, because doing so increases efficient use of resources and maximizes throughput, as disclosed in column 6 lines 35-40 in Rathonyi.

23. In regards to claims 17, 18 and 22, McFarland discloses claims 15 and 20, but does not disclose comparing a first and second parameter; and data cutting for cutting part of the data.

Rathonyi discloses comparing the original data rate with the currently available data rate. If the previous packet will not fit within the new parameters the packet is cut into multiple packets, each of a length that will fit within the new parameters (col. 9 line 62 – col. 10 line 3).

It would have been obvious to one of ordinary skill in the art to divide packets as taught by Rathonyi because doing so increases efficient use of resources and maximizes throughput, as disclosed in column 6 lines 35-40.

24. In regards to claim 19, Rathonyi discloses extracting a plurality of packets in column 10 lines 18-30.

25. Claims 23 and 24 are rejected upon the same grounds as claims 18 and 19.

***Allowable Subject Matter***

26. Claims 17-19, 22-24, and 37-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kerri M. Rose whose telephone number is (571) 272-0542. The examiner can normally be reached on Monday through Thursday, 7:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris H. To can be reached on (571) 272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

kmr



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